

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DARAIUS DUBASH, and DR. FARAZ HARSINI	§	
	§	
Plaintiffs,	§	CIVIL ACTION
	§	CASE NO. 4:23-cv-03556
v.	§	
CITY OF HOUSTON, TEXAS;	§	
HOUSTON DOWNTOWN PARK	§	
CORPORATION; OFFICER ROBERT	§	
DOUGLAS (# 7943), in his Individual	§	
capacity; OFFICER VERN WHITWORTH	§	
(# 7595), in his individual capacity;	§	
DISCOVERY GREEN CONSERVANCY	§	
f/k/a HOUSTON DOWNTOWN PARK	§	
CONSERVANCY; and BARRY MANDEL,	§	
in his individual capacity,	§	
Defendants.	§	

**DECLARATION OF KATHRYN LOTT IN RESPONSE TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

KATHRYN LOTT declares as follows pursuant to 28 U.S.C. § 1746:

1. I am over 18 years of age and am the President and Park Director of Discovery Green Conservancy (hereinafter “the Conservancy”), a position I have held since July 2023. In my capacity as President, I am familiar with the day-to-day operation of the Conservancy as well as Discovery Green, the management of preservation of which is the Conservancy’s core purpose. I am also familiar with the history, purpose, and mission of Discovery Green, as well as the rules and regulations that have been promulgated by Discovery Green to maintain an environment that is safe, family friendly, and supportive of the role that Discovery Green plays in downtown Houston.

2. I submit this Declaration in response to Plaintiffs' motion for a preliminary injunction.

3. Discovery Green is an open-air green space in downtown Houston, Texas. It is a space of less than 12 acres, every feature of which is planned and assigned a specific purpose intended to advance the mission of Discovery Green, which is to provide an urban green space in the heart of Houston that serves as a village green for our city, a source of health and happiness for our citizens, and a window into the incredible diversity of arts and traditions that enrich life in Houston.

4. Discovery Green includes a large performance stage, frequent public art installations, two restaurants with adjacent patios for outdoor dining, a large playground split into sections for two age groups, a water spray feature, a lake (Kinder Lake) fully contained in Discovery Green that has offered kayaking and remote control boat activities in the past, an ice skating rink in the winter season, a small staging area for small performances by solo performers and small performance troupes, and a lawn that can be used for relaxing and playing sports. Discovery Green routinely presents and hosts events of various kinds, and offers continuous programming that including concerts, fundraisers, yoga classes, dance performances, and movie nights year-round. Children's birthday parties can be held at Discovery Green by making a reservation for the "H-E-B Family Celebration Zone." Discovery Green also has a dedicated "Speakers' Corner," a designated location for individuals to engage in speech, demonstration, protesting, etc., located nearby a prominent entrance to Discovery Green with visibility to passersby.

5. The City of Houston manages its public parks by way of its Parks and Recreation Department. Discovery Green is not, however, under that Department's jurisdiction.

6. Discovery Green has promulgated a set of rules and regulations governing its use (“the Rules”). Among other things, the Rules require permits in advance of functions involving groups of 20 or more, exhibiting or performing to derive revenue, and using any area of Discovery Green for a special use. The Rules contain a list of activities that are prohibited, including activities that disrupt use of Discovery Green by others, foisting handbills without consent, and use of obscene, abusive, insulting, or threatening language. A copy of the Rules is submitted as **Exhibit**

A. As relevant here, those Rules include the following provisions:

- Park Rules prohibit activities that disrupt the use of the Park by others (§ 0.3)
- No Person shall use any Park Area or Park Facility for any purpose other than for the purpose for which it was designed, dedicated or for which a Special Use permit has been granted (§ 2.1.1)
- No person shall hold, conduct or cause to occur any Special Use of the Park, Park Area or Park Facility without first obtaining the written permission of the Director (§ 2.1.2)¹
- No person or bill distributor shall hand to or foist upon any Park Patron or Park User a handbill without the consent of such Park Patron or Park User, nor shall any bill distributor thereby encroach upon the use and enjoyment of the Park by others (§ 2.1.22)
- The Conservancy shall post a designated “speakers corner” in the Park for members of the general public desiring to exercise their rights to free speech by engaging in public speaking. A group of speakers exceeding twenty (20) people is considered a Public Gathering, which requires a permit as described in Section 3.0 of these Park Rules. In the event that a member of the general public attempts to engage in public speaking in any other area of the Park without first obtaining a Special Use Permit which permits such individual to do so, such individual shall be required to move to the speakers corner and shall be ejected from the Park if he or she refuses to move to the speakers corner. Further, the Conservancy reserves the right to restrict an individual’s use of the speakers corner and/or eject them from the Park to the extent he or she (1) uses fighting words, which are words that by their very utterance tend to incite an immediate breach of the peace; (2) threatens to physically harm others; (3) engages in obscene speech or conduct; or (4) utilizes audio amplification devices. (§ 2.1.39).
- Staring, stalking, harassment, or other behavior that reasonably can be expected to disturb others is prohibited (§ 2.1.44).
- Except for Public Gathering . . . , requests for Special Use permits, and any additional, special or extra privileges requested therein, shall be evaluated based on the following criteria: . . . (b) The compatibility of the requested Special Use with the design,

¹ “Special Use” is defined as “the granting of additional, extra, special and/or exclusive privileges to use a Park Area and/or Park Facility for the purpose of conducting Public Gatherings, Restricted Uses (events, fund raising activities, meetings, other functions), Non-Restricted Uses, or Licensed Uses” (§ 1.2.2[z]).

function, amenities and purpose of the Park, Park Area(s) and/or Park Facility(ies) or part thereof; . . . (m) Overall, whether the requested Special Use . . . may have an adverse effect on the use of the Park, Park Area(s) and/or Facility(ies) by the public (§§ 3.1.5[b], [m], [n])

7. The Rules are intended to promote and preserve an environment that is not only safe, but is also conducive to the objection of Discovery Green, which includes providing a safe, enriching space where families, including children of all ages, can enjoy the playgrounds, amenities, and events that are available, in a manner that is appropriate for children.

8. In addition to hosting cultural, artistic, and entertainment events, Discovery Green has always had a tradition of promoting freedom of expression, and provides the opportunity for individuals of all persuasions and beliefs to use Discovery Green to speak their message in a manner and at times that would not be disruptive to the core function of Discovery Green.

9. Discovery Green provides this opportunity predominantly by way of two chief methods. One is by speaking in the above-described Speakers' Corner, where individuals need not first obtain permission or a permit provided that the group consists of fewer than 20 people. A map of Discovery Green is attached as **Exhibit B**. The Speakers' Corner can be found at to the northwest of the garage stairs adjacent to number 15 on that map.

10. The second method is to obtain either a special use or large group permit. Discovery Green frequently hosts demonstrations by large groups, and does so without regard for the specific message that the demonstrators intend to convey. Discovery Green has hosted demonstrators promoting a wide-ranging variety of causes. For instance, in the past, among other things, Discovery Green has hosted a rally for the reelection of former President Donald Trump, an anti-gun-violence protest of a National Rifle Association convention at the George R. Brown Convention Center adjacent to Discovery Green, pro-life and pro-choice demonstrations and counter-demonstrations, and demonstrations in support of both Israel and Palestine with regard to

the ongoing Israeli-Palestinian conflict. We have allowed political events for both the Republican and Democratic Parties.

11. Discovery Green does not censor the speech of those demonstrating on its grounds. Nor does it determine whether to grant a permit based upon the identity of the applicant or its intended message. Discovery Green reviews permits to ensure that the intended activities can be accommodated, and that the location and method of demonstration would not be disruptive, *e.g.*, in a location that impedes the public's use of Discovery Green, using sound amplification, or involving conduct that would violate the Rules. This would include, among other things, playing videos that display graphic footage of animals being slaughtered.

12. Regardless of the message, viewpoints, or causes that drive any demonstration, or the identity of the people or organizations intending to do so, Discovery Green will not allow public broadcasting of videos displaying violence or death. This would include killing or torturing animals. Apart from the inherently disturbing nature of videos depicting slaughter of animals, which would run contrary to Discovery Green's goal of fostering a family-appropriate culture and environment, it also undoubtedly frightens children who are in Discovery Green, whether in the playground, participating in or watching events, or walking through any of the pedestrian thoroughfares. Discovery Green hosts frequent events and activities that are geared toward, or otherwise include, children, resulting in children of all ages passing through the walkways in Discovery Green throughout the day.

13. I am aware of the allegations that have been made in this litigation. It is my understanding that Plaintiffs demonstrate by standing in a square formation with the participants facing outward while holding television monitors playing graphic videos of animals being slaughtered. The playing of such videos is antithetical to the function of Discovery Green.

14. It is my understanding that Discovery Green employees have fielded multiple complaints from individuals in the park on days when Plaintiffs are demonstrating. I have been advised that parents frequently complain whenever Plaintiffs demonstrate, asserting that their children have been frightened by the videos and may have nightmares as a result. Discovery Green employees have told me that they have found not only that Plaintiffs' videos are disruptive insofar as they take a prominent location in the center of a major promenade, forcing patrons to see the videos, but they also violate the Rules insofar as Plaintiffs are playing videos without first seeking a special use permit. Further, the locations where Plaintiffs were protesting are in the center of the two busiest pedestrian intersections in Discovery Green. One is within 200 yards of the playgrounds, and is adjacent to the public restrooms and one of the restaurants in Discovery Green. None of the patrons have complained about Plaintiffs' viewpoints, and even if they had, Discovery Green would not take action on such a basis.

15. As noted, Discovery Green does not base the issuance of permits on the message driving any demonstrations. However, Plaintiffs' claims here of viewpoint discrimination are particularly specious because the goals of Discovery Green, as an organization devoted to conservation and the sustainment of natural environments, are aligned with the view that animals should not be tortured.

16. It is my understanding that Discovery Green employees have encouraged Plaintiffs to consider other methods of conveying their message in support of animal rights. It is my understanding that Discovery Green employees have recommended, for instance, that they seek a special use permit to reserve a location that would give them the opportunity to present to an audience. If they so choose, they should do so by complying with the Rules and the processes they

require. Likewise, any such efforts would have to be accomplished without playing the graphic videos that are the subject of this lawsuit.

17. Alternatively, Plaintiffs would be permitted to demonstrate, without the videos, it the Speakers' Corner without first applying for a permit. They could continue to convey their message against animal cruelty in that context and can rest assured that there would be no viewpoint-based censoring of their speech by the Conservancy. Their activities there would be subject, of course, to content-neutral enforcement of the Rules.

18. To be clear, Plaintiffs are free to speak their message in Discovery Green without viewpoint-based or content-based discrimination.

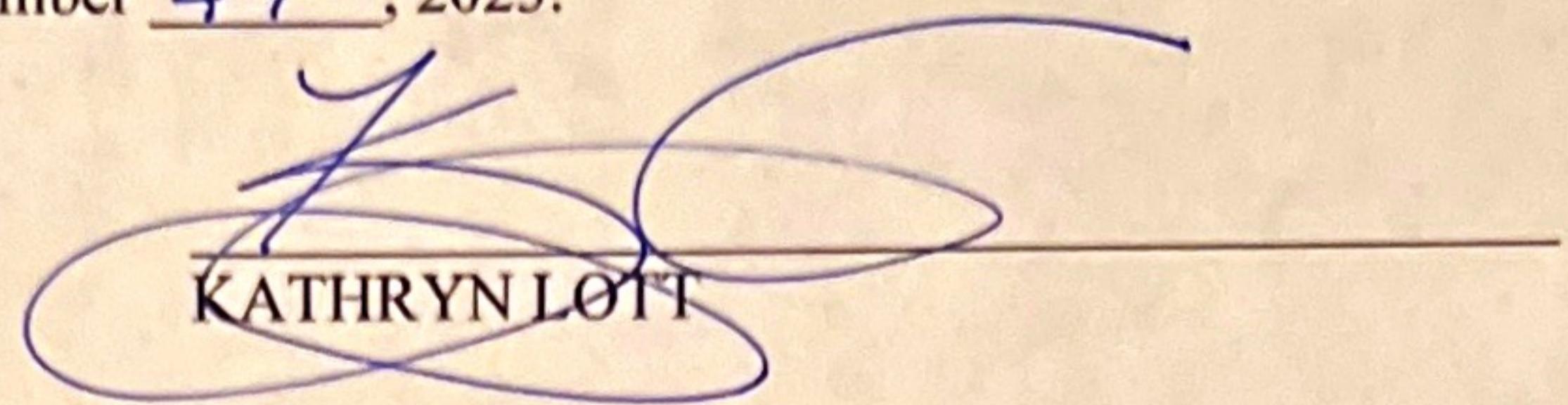
19. I am aware that Plaintiff Dubash has alleged that he is being discriminated against because of his religious beliefs. This is not the case. While Plaintiffs are not permitted to publicly display videos of violence against animals at Discovery Green, Plaintiff Dubash is free to speak about his religious beliefs. Discovery Green has not, and will not, discriminate against him because of his religion. He is free to speak freely about his religious beliefs at Discovery Green.

20. Lastly, Discovery Green is operated on land owned by the Houston Downtown Park Corporation (“HDPC”). Discovery Green is operated by the Conservancy pursuant to an Operating Agreement between HDPC and the Conservancy. A copy of the Operating Agreement is attached as **Exhibit C**. However, HDPC has no involvement in the day-to-day operations of Discovery Green. It has no control or management responsibilities over Discovery Green, and has no employees involved in the operation of Discovery Green. HDPC promulgates the Rules after consultation with the Conservancy. Ultimately, it leaves it to the Conservancy to enforce them, because the management and operation of Discovery Green falls to the Conservancy.

21. The City of Houston also has no involvement in the day-to-day operation of Discovery Green. It likewise has no control or management responsibilities over Discovery Green, and has no employees involved in Discovery Green's operation. If the Conservancy requires the assistance of City officials or emergency services, it contacts the appropriate City agency directly, and does not involve HDPC.

22. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Houston, Texas, on December 27, 2023.



A handwritten signature in blue ink, appearing to read "KATHRYN LOTI", is enclosed within a large, roughly circular, hand-drawn oval. A horizontal line extends from the right side of the oval.